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SUPERIOR COURT OF STATE OF ARIZONA
COUNTY OF YAVAPAI

STATE OF ARIZONA,

Plaintiff,

vs.

JAMES ARTHUR RAY,

Defendant.

CASE NO. V1300CR201080049

Hon. Warren Darrow

DIVISION PTB

**DEFENDANT JAMES ARTHUR RAY'S
REQUESTED JURY INSTRUCTIONS**

Defendant James Arthur Ray, by and through undersigned counsel, hereby requests that the Court issue the following jury instructions in addition to standard instructions to be addressed separately by the Court and parties.

1. RAJI STANDARD CRIMINAL 10 (WILLITS INSTRUCTION)

The Defense has filed a separate request for a Willits instruction on this day pursuant to RAJI Standard Criminal Instruction 10, "Lost, Destroyed, or Unpreserved Evidence."

1 **2. RAJI STANDARD CRIMINAL 11 (MULTIPLE ACTS)**

2 Pursuant to RAJI Standard Criminal Instruction 11, the Defense requests that the jury be
3 instructed:

4
5 Mr. Ray is accused of having committed the crime of reckless
6 manslaughter in Counts 1, 2, and 3. The prosecution has introduced evidence
7 seeking to prove that there is more than one act upon which a conviction on
8 Counts 1, 2, and 3 may be based. You may not find Mr. Ray guilty unless the
9 proof shows beyond a reasonable doubt that he committed one or more of the acts
10 alleged. Furthermore, in order to return a verdict of guilty as to any of the counts,
11 all twelve jurors must agree that Mr. Ray committed the same act with a reckless
12 state of mind, as defined in Jury Instruction 1.056(c). If you cannot unanimously
13 agree as to what act constituted the crime, you must find Mr. Ray not guilty of the
14 alleged crime.

15
16 This instruction is mandated by the Arizona Constitution and decisional law. "Article 2,
17 Section 23 of the Arizona Constitution guarantees a defendant the right to a unanimous jury
18 verdict in a criminal case. A violation of that right constitutes fundamental error." *State v. Davis*,
19 206 Ariz. 377, 390 (2003). Accordingly, "if the State introduces evidence of multiple criminal
20 acts to prove a single charge, the trial court is normally obliged to take one of two remedial
21 measures to insure that the defendant receives a unanimous jury verdict:" the Court "must either
22 require the state to elect the act which it alleges constitutes the crime, or instruct the jury that they
23 must agree unanimously on a specific act that constitutes the crime before the defendant can be
24 found guilty." *State v. Klokic*, 219 Ariz. 241, 244 (App. 2008). Here, there has been no election,
25 and as the Court has expressly noted on the record and the State's Rule 20 briefing made clear,
26 duplicity is an issue. A unanimity instruction must be given.

1 **3. RAJI STATUTORY INSTRUCTION 2.03 (CAUSATION)**

2 Pursuant to RAJI Statutory Criminal Instruction 2.03, the Defense requests that the jury be
3 instructed:

4 For conduct to be the cause of a result, there must be proof beyond a
5 reasonable doubt of all three of the following:

6 1. But for the alleged conduct, the alleged result would not have occurred;

7 AND

8 2. Mr. Ray must have engaged in the allegedly causal conduct with a
9 reckless mental state, as defined in Jury Instruction 1.056(c); AND

10 3. The alleged conduct must be the proximate cause of the alleged result.

11 The proximate cause of a death is a cause which, in a natural and
12 continuous sequence of events, produces the death and without which the death
13 would not have occurred.

14 Proximate cause does not exist if (1) the chain of natural effects and cause
15 either does not exist OR (2) is broken by a superseding intervening event that was
16 unforeseeable by the defendant and, with the benefit of hindsight, may be
17 described as abnormal or extraordinary.

18 The State must prove beyond a reasonable doubt that a superseding
19 intervening event did not cause the death. If you find the State has not proven
20 beyond a reasonable doubt that a superseding intervening event did not cause the
21 death, you must find Mr. Ray not guilty of the crime charged in that particular
22 count.

23 *See, e.g., State v. Bass*, 198 Ariz. 571, 575-77 (2000) (instruction given in auto-accident
24 manslaughter case where defendant claimed that the actions of her passenger and another driver
25 intervened). *Cf. State v. Shumway*, 137 Ariz. 585, 588 (1983) (reversing conviction for negligent
26 homicide, holding that the jury should have been instructed on a driver's duty to yield the right of
27 way when making a left turn, as the victim's alleged negligence might have relieved defendant of
28 criminal responsibility).

1 **4. MEANING OF "SUBSTANTIAL AND UNJUSTIFIABLE" RISK**

2 Pursuant to Arizona case law, the Defense requests that the jury be instructed on the
3 meaning of "substantial and unjustifiable risk":

4
5 In civil cases, a defendant can be liable if the risk of harm caused by his
6 conduct is merely "unreasonable." In criminal cases the standard is higher. The
7 risk of death must be so high, and the likelihood of death must be so great, that the
8 risk is "substantial and unjustifiable." A risk is substantial and unjustifiable if the
9 degree of risk so much greater that it is *different in kind* from the types of
10 unreasonable risk that give rise to civil liability.

11
12 *See, e.g., State v. Far West Water & Sewer*, 224 Ariz. 173 (2010); *In re William G.*, 192 Ariz.
13 208 (App. 1998); *Williams v. Wise*, 106 Ariz. 335 (1970).

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15 **5. MEANING OF "GROSS DEVIATION"**

16 Pursuant to Arizona case law, the Defense requests that the jury be instructed on the
17 meaning of "gross deviation":

18 A "gross deviation from the standard of conduct" is one that is flagrant and
19 extreme, and outrageous, heinous and grievous. The deviation from reasonable
20 conduct must be significantly greater than the mere inadvertence or heedlessness
21 that are sufficient for civil negligence.

22 The facts must be such that the consequences of the gross deviation from
23 the standard of conduct could reasonably have been foreseen and it must appear
24 that the death was not the result of mere inattention, mistaken judgment or
25 misadventure but the natural and probable result of a flagrant and extreme, and
26 outrageous, heinous and grievous act.

27 *See, e.g., State v. Far West Water & Sewer*, 224 Ariz. 173 (2010); *In re William G.*, 192 Ariz. 208
28 (App. 1998).

1 **6. PRESUMPTION OF FREE WILL**

2 Pursuant to Arizona case law and basic legal precept, the Defense requests the following
3 instruction:

4
5 The law presumes that all persons possess a free will. It is up to you to
6 decide whether the free will of an injured party was a superseding intervening
7 cause of the deaths.

8
9 *See, e.g., State v. Tison*, 129 Ariz. 546, 555 (1981) ("Because the law is egalitarian, all persons
10 are held accountable for the results of their conduct, it being presumed that all possess a free
11 will.") (rejecting mitigation argument that defendant's father manipulated him); *Lewis v. State*,
12 474 So.2d 766, 771 (Ala. Crim. App. 1985) ("Cases have consistently held that the 'free will of
13 the victim is seen as an intervening cause which ... breaks the chain of causation.'").

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16 DATED: June 10, 2011

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20
21 By: 

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23
24 Copy of the foregoing delivered this 10 day of June, 2011, to:

25 Sheila Polk
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27 Prescott, Arizona 86301
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